

147 FERC ¶ 61,154
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Cheryl A. LaFleur, Acting Chairman;
Philip D. Moeller, John R. Norris,
and Tony Clark.

San Diego Gas & Electric Company

Docket No. EL00-95-277

v.

Sellers of Energy and Ancillary Services

Investigation of Practices of the California
Independent System Operator and the California
Power Exchange Corporation

Docket No. EL00-98-256

Puget Sound Energy, Inc.

Docket No. EL01-10-131

v.

Sellers of Energy and/or Capacity

Investigation of Wholesale Rates of Public Utility
Sellers of Energy and Ancillary Services in the
Western Systems Coordinating Council

Docket No. EL01-68-047

State of California, *ex rel.* Bill Lockyer, Attorney
General of the State of California

Docket No. EL02-71-046

v.

British Columbia Power Exchange Corp.

American Electric Power Service Corporation

Docket No. EL03-137-044

Enron Power Marketing, Inc. and Enron Energy
Services Inc.

Docket No. EL03-180-073

TransAlta Energy Marketing (U.S.) Inc. and
TransAlta Energy Marketing (California) Inc.

Docket Nos. EL03-176-006
EL03-202-008

People of the State of California, *ex rel.* Edmund G. Brown, Jr. Attorney General of the State of California

v.

Powerex Corp. (f/k/a British Columbia Power Exchange Corp.)

California Independent System Operator Corporation

Docket No. ER03-746-049

Investigation of Anomalous Bidding Behavior and Practices in Western Markets

Docket No. IN03-10-083

Fact-Finding Investigation Into Possible Manipulation of Electric and Natural Gas Prices

Docket No. PA02-2-098

ORDER APPROVING UNCONTESTED SETTLEMENT

(Issued May 28, 2014)

1. In this order, the Commission approves an uncontested settlement filed on March 18, 2014, between TransAlta Energy Marketing (U.S.) Inc. and TransAlta Energy Marketing (California) Inc. (together, TransAlta) and the California Parties¹ (collectively, the Parties), as discussed below. The settlement resolves claims arising from events, conduct, and transactions in the Western energy markets during the period January 1, 2000 through June 20, 2001 (Settlement Period),² as they relate to TransAlta. The settlement consists of a “Joint Offer of Settlement and Motion for Procedural Relief”

¹ The California Parties are Pacific Gas and Electric Company, San Diego Gas & Electric Company, Southern California Edison Company, the People of the State of California *ex rel.* Kamala D. Harris, Attorney General, and the California Public Utilities Commission (CPUC). For purposes of the Settlement, the California Parties also include the California Department of Water Resources (acting solely under authority and powers created by California Assembly Bill 1 of the First Extraordinary Session of 2001-2002, codified in Sections 80000 through 80270 of the California Water Code).

² Joint Explanatory Statement at 2-3.

(Joint Offer of Settlement), a “Joint Explanatory Statement,” and a “Settlement and Release of Claims Agreement” (collectively, the Settlement).³

2. The Parties filed the Settlement pursuant to Rule 602 of the Commission’s Rules of Practice and Procedure.⁴ The Parties state that they have executed the Settlement and that it became binding as of the execution date; however, some of the provisions only become effective as of, or in relation to the Settlement Effective Date, which is defined as the sixth business day after the Commission issues an order approving the Settlement, and subject to certain conditions if the Commission modifies or conditions its approval of the Settlement.⁵ Additionally, the Parties explain that the Settlement will terminate on the date of a final order rejecting the Settlement in whole or material part or accepting it with material conditions or modifications deemed unacceptable to any adversely affected Party.⁶ The Parties also state that the Settlement may terminate if the California Parties fail to receive consideration that they are due under the Settlement.⁷

3. The Parties state that the Settlement benefits market participants by resolving claims for refunds and other remedies as between TransAlta on the one hand and the California Parties on the other relating to TransAlta’s transactions in the Western energy markets during the Settlement Period.⁸ The Parties state that approval of the Settlement will avoid further litigation, provide monetary consideration, eliminate regulatory uncertainty, and enhance financial certainty.⁹ Finally, the Parties note that the Commission and the United States Court of Appeals for the Ninth Circuit have

³ On March 11, 2011, then-Commissioner Cheryl A. LaFleur issued a memorandum to the file in sixty dockets, including Docket No. EL00-95-000, documenting her decision, based on a memorandum from the Office of General Counsel’s General and Administrative Law section, dated February 18, 2011, not to recuse herself from considering matters in those dockets.

⁴ 18 C.F.R. § 385.602 (2013).

⁵ Joint Explanatory Statement at 17; Settlement and Release of Claims Agreement at §§ 1.38, 1.84, 2.3.1.

⁶ Joint Explanatory Statement at 18; Settlement and Release of Claims Agreement at § 2.3.

⁷ Joint Explanatory Statement at 18; Settlement and Release of Claims Agreement at §§ 4.1.2.5, 4.3.

⁸ Joint Offer of Settlement at 6-7.

⁹ *Id.* at 7.

encouraged settlements of claims related to conduct and transactions in the Western energy markets in the 2000 and 2001 time period.¹⁰

4. As discussed below, the Commission approves the Settlement.

Background and Description of the Settlement

5. In 2000, the Commission instituted formal hearing procedures under the Federal Power Act (FPA)¹¹ to investigate, among other things, the justness and reasonableness of public utility sellers' rates in the California Independent System Operator Corporation (CAISO) and California Power Exchange (CalPX) markets in Docket Nos. EL00-95-000 and EL00-98-000.¹² In 2002, the Commission directed its staff to commence a fact-finding investigation into the alleged manipulation of electric and natural gas prices in the West in Docket No. PA02-2-000.¹³ In 2003, the Commission directed its staff to investigate anomalous bidding behavior and practices in Western energy markets in Docket No. IN03-10-000.¹⁴ On the same day, the Commission issued two orders directing named entities to show cause that they had not participated in certain gaming practices¹⁵ or why their arrangements with other entities did not constitute gaming and/or anomalous bidding behavior.¹⁶

6. The Parties state that the Settlement resolves claims against TransAlta in the above-captioned proceedings during the Settlement Period.¹⁷ Any entity that directly sold or purchased capacity, energy, and/or ancillary services through CAISO and/or

¹⁰ *Id.* (citing *Pub. Utils. Comm'n of the State of Cal.*, 99 FERC ¶ 61,087, at 61,384 (2002) and *Pub. Utils. Comm'n of the State of Cal. v. FERC*, No. 01-71051, slip op. at 3 (9th Cir. Oct. 23, 2006)).

¹¹ 16 U.S.C. § 791, *et seq.* (2012).

¹² *San Diego Gas & Elec. Co. v. Sellers of Energy and Ancillary Servs.*, 92 FERC ¶ 61,172 (2000).

¹³ *Fact-Finding Investigation of Potential Manipulation of Electric and Natural Gas Prices*, 98 FERC ¶ 61,165 (2002).

¹⁴ *Investigation of Anomalous Bidding Behavior and Practices in the Western Markets*, 103 FERC ¶ 61,347 (2003).

¹⁵ *American Elec. Power Serv. Corp.*, 103 FERC ¶ 61,345 (2003).

¹⁶ *Enron Power Mktg., Inc.*, 103 FERC ¶ 61,346 (2003).

¹⁷ Joint Explanatory Statement at 4.

CalPX during the Settlement Period (Participant) may elect to be bound by the terms of the Settlement as an “Additional Settling Participant.”¹⁸ To opt into the Settlement, a Participant must provide notice to the Commission, as well as serve notice to parties on the ListSrvs established for the Docket No. EL00-95 proceeding and in Docket Nos. EL03-137, *et al.* and EL03-180, *et al.*, no later than five business days following the Settlement Effective Date.¹⁹ The Parties state that the rights of Participants that do not wish to opt into the Settlement will be unaffected by the Settlement, and that such Non-Settling Participants will have no right to obtain certain benefits of the Settlement, but will still be paid refunds, if any, to which they are ultimately determined to be due through continued litigation.²⁰

7. The Parties state that the monetary consideration flowing from TransAlta under the Settlement totals \$149,000,000 before final adjustments, and will be funded in part from TransAlta’s estimated receivables amount of \$51,582,950 and estimated interest on receivables of \$45,417,050, through September 30, 2013.²¹ Furthermore, TransAlta will make two separate payments of \$26,000,000 each to the California Parties, with the first payment due no later than five business days after the Settlement Effective Date and the second payment due one year after the Settlement Effective Date.²² Under the Settlement, TransAlta will assign to the California Parties its entitlement to refunds on certain purchases made in the California markets during the Settlement Period.²³

¹⁸ Joint Explanatory Statement at 18; Settlement and Release of Claims Agreement at §§ 1.2, 1.55, 8.1.

¹⁹ Joint Explanatory Statement at 18; Settlement and Release of Claims Agreement at § 8.1.

²⁰ Joint Explanatory Statement at 18-19; Settlement and Release of Claims Agreement at §§ 1.53, 3.2, 5.5, 8.1.

²¹ Joint Explanatory Statement at 19; Settlement and Release of Claims Agreement at § 4.1.1. Interest will be updated through and including the projected date of distribution. Joint Explanatory Statement at 19.

²² Joint Explanatory Statement at 19; Settlement and Release of Claims Agreement at § 4.1.2. Failure of TransAlta to make the initial payment is grounds for the California Parties to terminate the Settlement. Joint Explanatory Statement at 19. Additionally, the Parties explain that, to secure the second payment, TransAlta has agreed to post a letter of credit, which is a condition precedent to the Settlement Effective Date. *Id.*

²³ Joint Explanatory Statement at 20; Settlement and Release of Claims Agreement at § 4.1.8.

8. The Settlement provides that certain of the California Parties will assume responsibility for, subject to specified limitations, the obligation for: (1) any true-up of interest on TransAlta's receivables resulting from Commission orders; (2) any refund amounts that TransAlta owes to Non-Settling Participants in the relevant Commission proceedings; (3) any refund shortfall, receivables shortfall, or interest shortfall relating to TransAlta resulting from certain Commission determinations; (4) any third-party refund offsets (Fuel Cost Allowance, Emissions Offset, and Cost Offset) that the Commission or a court determines that TransAlta owes; (5) certain dispute resolution charges; and (6) any CalPX wind-up charges assessed against TransAlta after the Settlement Effective Date.²⁴

9. The Settlement includes a matrix that allocates the Settlement proceeds among Participants.²⁵ The proceeds will be distributed from a refund escrow, the costs of which will be the responsibility of the California Parties, to each of the Settling Participants and/or, in the case of amounts allocated to any Non-Settling Participants, to be transferred to the California Parties.²⁶ The Settlement provides that the obligation of the California Parties to make payments on behalf of TransAlta under the terms of the Settlement shall not exceed the total amount allocated and actually paid to that California Party, as set forth in the Settlement.²⁷ The Settlement also states that the Commission's approval of the Settlement will authorize CAISO and CalPX to conform their books and records to reflect the distributions.²⁸

10. The Parties explain that, in return for the specified consideration and subject to specified limitations, the Settlement resolves claims between the California Parties on the one hand and TransAlta on the other, relating to the conduct of the Parties, or transactions

²⁴ Joint Explanatory Statement at 20; Settlement and Release of Claims Agreement at §§ 4.1.5, 4.1.6, 5.3, 5.6, 5.7.

²⁵ Joint Explanatory Statement at 21; Settlement and Release of Claims Agreement at Ex. A.

²⁶ Joint Explanatory Statement at 21; Settlement and Release of Claims Agreement at §§ 5.1, 5.5.

²⁷ Joint Explanatory Statement at 21; Settlement and Release of Claims Agreement at § 5.8.

²⁸ Joint Explanatory Statement at 22; Settlement and Release of Claims Agreement at § 6.1.

between the Parties, in Western energy markets during the Settlement Period for damages, refunds, disgorgement of profits, costs and attorneys' fees, or other remedies.²⁹

11. The Parties state that, subject to specified limitations, the Settlement provides for the California Parties and TransAlta to mutually release and discharge each other as of the effective date of the Settlement and completion of certain transfers of consideration, from claims before the Commission and/or under the FPA for the Settlement Period that: (1) TransAlta or any California Party charged or collected unjust, unreasonable, or otherwise unlawful rates, terms, or conditions for electric capacity, energy, ancillary services, or transmission congestion during the Settlement Period; (2) TransAlta or any California Party manipulated Western energy markets in any fashion or otherwise violated any applicable tariff, regulation, law, rule, or order relating to the Western energy markets during the Settlement Period; or (3) any California Party is liable for payments to TransAlta for congestion charges, transmission line losses, energy, or ancillary services during the Settlement Period.³⁰

12. In addition, the Parties state that the Settlement provides, subject to certain specified limitations, for the California Parties, on one hand, and TransAlta, on the other, mutually to release the other from all past, existing, and future claims for civil damages and/or equitable relief concerning, pertaining to, or arising from allegations that: (1) TransAlta or any California Party charged or collected unjust, unreasonable, or otherwise unlawful rates, terms, or conditions for electric capacity, energy, ancillary services, or transmission congestion in the Western energy markets during the Settlement Period; (2) TransAlta or any California Party, during the Settlement Period, manipulated the Western energy markets in any fashion; (3) TransAlta or any California Party was unjustly enriched by the foregoing released claims or otherwise violated any applicable tariff, regulation, law, rule, or order relating to transactions in the Western energy markets during the Settlement Period; or (4) any California Party is liable for payments to TransAlta for congestion charges, transmission line losses, energy, or ancillary services during the Settlement Period.³¹

²⁹ Joint Explanatory Statement at 22; Settlement and Release of Claims Agreement at §§ 3.1, 7.1.1.

³⁰ Joint Explanatory Statement at 22-23; Settlement and Release of Claims Agreement at § 7.2.1.

³¹ Joint Explanatory Statement at 23-24; Settlement and Release of Claims Agreement at § 7.3.1.

13. Participants that elect to participate in the Settlement as Additional Settling Participants are deemed to provide and receive from TransAlta the releases set forth in the Settlement.³²

14. Finally, section 2.2.5 of the Settlement provides that the Commission's order approving the Settlement constitutes a determination by the Commission "that any allegation, statement, claim, pleading, exhibit, pre-filed testimony or other matter submitted by [TransAlta] in the EL01-10 Proceeding shall not be interpreted or used in any manner against any of the California Parties" and that any of the foregoing submitted by the California Parties "shall not be interpreted or used in any manner against" TransAlta.³³

15. The Parties state that they would not object to the Commission assuring CAISO and CalPX that they will be held harmless for their actions to implement the Settlement.³⁴

Procedural Matters

16. As noted above, the Parties filed the Settlement pursuant to Rule 602 of the Commission's Rules of Practice and Procedure.³⁵ The Parties request that the Settlement be transmitted directly to the Commission for approval rather than being certified by an administrative law judge.³⁶

17. Pursuant to Rule 602(f) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.602(f) (2013), initial comments on the Settlement were to be submitted no later than April 7, 2014, and reply comments were to be submitted no later than April 17, 2014. Initial comments were filed by CAISO and CalPX, either in support of or not opposing the Settlement. Initial comments in partial opposition to the Settlement were filed by Shell Energy North America (US), L.P. and TransCanada Energy Ltd. and TransCanada Energy Marketing (California) Inc. (collectively, Indicated Respondents), as well as by FERC Trial Staff (Trial Staff). Reply comments were filed by the Parties

³² Joint Explanatory Statement at 24; Settlement and Release of Claims Agreement at §§ 7.4, 8.2.

³³ Settlement and Release of Claims Agreement at § 2.2.5.

³⁴ Joint Explanatory Statement at 24.

³⁵ 18 C.F.R. § 385.602 (2013).

³⁶ Joint Offer of Settlement at 3-4 (citing *San Diego Gas & Elec. Co. v. Sellers of Energy and Ancillary Servs.*, 137 FERC ¶ 61,156, at P 15 (2011); *San Diego Gas & Elec. Co. v. Sellers of Energy and Ancillary Servs.*, 131 FERC ¶ 61,082, at P 14 (2009)).

(Joint Reply Comments). Indicated Respondents filed supplemental comments on April 17, 2014.

18. We agree with the Parties that it is appropriate for the Commission to review this Settlement without certification by an administrative law judge.

Settlement Comments

Hold Harmless Treatment

19. Both CAISO and CalPX note that the circumstances of this Settlement warrant hold harmless treatment for CAISO and CalPX because they, along with their directors, officers, employees, and consultants, will implement a number of the Settlement's provisions.³⁷ Accordingly, CalPX requests that the following "hold harmless" language be incorporated into any Commission order approving the Settlement:

The Commission recognizes that CalPX will be required to implement this settlement by paying substantial funds from its Settlement Clearing Account at the Commission's direction. Therefore, except to the extent caused by their own gross negligence, neither officers, directors, employees nor professionals shall be liable for implementing the settlement including but not limited to cash payouts and accounting entries on CalPX's books, nor shall they or any of them be liable for any resulting shortfall of funds or resulting change to credit risk as a result of implementing the settlement. In the event of any subsequent order, rule or judgment by the Commission or any court of competent jurisdiction requiring any adjustment to, or repayment or reversion of, amounts paid out of the Settlement Clearing Account or credited to a participant's account balance pursuant to the settlement, CalPX shall not be responsible for recovering or collecting such funds or amounts represented by such credits.³⁸

20. CalPX states that this is the same "hold harmless" provision that the Commission has approved in other orders approving settlements.³⁹

³⁷ CAISO Comments at 4-7; CalPX Comments at 3-6.

³⁸ CalPX Comments at 6.

³⁹ *Id.* at 5.

21. In their Joint Reply Comments, the Parties reiterate that they do not oppose incorporation of “hold harmless” language in the order approving the Settlement.⁴⁰

Interpretation of Section 2.2.5 of the Settlement

22. Indicated Respondents argue that section 2.2.5 of the Settlement prejudicially affects the rights of non-settling parties. According to Indicated Respondents, section 2.2.5, which provides that allegations, claims, pleadings, testimony or other matters submitted by TransAlta in the ongoing hearing proceeding in Docket No. EL01-10 shall not be used against the California Parties and, similarly, that any such items submitted by the California Parties cannot be used against TransAlta, runs counter to assurances that the Parties provided to the Presiding Administrative Law Judge (Presiding ALJ) in the Docket No. EL01-10 hearing. Indicated Respondents explain that the Parties filed a motion with the Presiding ALJ in Docket No. EL01-10-085 that proposed a similar restriction on the use of evidence in the closed record in that proceeding. Indicated Respondents state that when they raised concerns about this proposed restriction, the Parties responded that they were only asking that the Initial Decision refrain from addressing and resolving California Parties’ claims against TransAlta.⁴¹ Indicated Respondents state that, based on this clarification from the Parties, the Presiding ALJ granted the Parties’ motion.

23. However, Indicated Respondents state that when they saw the same limitation in section 2.2.5 of the Settlement, they contacted the Parties for confirmation that the Parties were not proposing to limit the ability of non-parties to rely on the closed record in Docket No. EL01-10. Indicated Respondents state that the confirmation they sought was not provided. Thus, according to Indicated Respondents, section 2.2.5 would restrict their rights, as well as those of third parties, the Presiding ALJ, and the Commission to rely on allegations, statements, claims, pleadings, exhibits, pre-filed testimony, and other matters that the Parties submitted into the closed record in Docket No. EL01-10. Indicated Respondents argue that this restriction flouts the Presiding ALJ’s ruling. They also assert that the provision violates their right to rely on evidence in a closed record, explaining that section 2.2.5 would have the effect of withdrawing evidence from that record. Indicated Respondents argue that any request to withdraw evidence from a closed

⁴⁰ Joint Reply Comments at 4.

⁴¹ Indicated Respondents Comments at 5 (quoting *Joint Request to File Answer and Answer to Indicated Respondent’s Answer in Partial Opposition to Joint Motions for Procedural Relief*, Docket No. EL01-10-085, at 3 (March 5, 2014)).

record must, if opposed, be authorized by the Commission.⁴² In this case, they contend, withdrawing evidence from the closed record would raise due process concerns.⁴³

24. Trial Staff raises similar concerns about section 2.2.5, arguing that the language is overly broad because it is not limited to the evidentiary record and other submissions related to claims by the California Parties against TransAlta. According to Trial Staff, section 2.2.5 would not allow parts of the evidentiary record related to claims by the California Parties against non-settling parties to be used against the California Parties by the Commission, Trial Staff, or non-settling parties with respect to such claims. Thus, Trial Staff argues, the rights of non-settling parties are affected by the effective reopening and modification of a closed evidentiary record.⁴⁴ Trial Staff states that, to the extent that section 2.2.5 limits the Commission, the Presiding ALJ, Trial Staff, and non-settling parties from using evidence in the closed record, the Settlement is at odds with the Presiding ALJ's ruling on the use of evidence in the Initial Decision in Docket No. EL01-10-085, as well as Commission precedent.⁴⁵ Finally, Trial Staff proposes a modification to section 2.2.5 for the Commission's consideration.⁴⁶

25. In their Joint Reply Comments, the Parties state that they do not oppose the assurances that Indicated Respondents and Trial Staff seek. The Parties state that, to remove the objection that these commenters raised and to promote certainty, they clarify that section 2.2.5 of the Settlement should not be interpreted to prevent non-settling parties in Docket No. EL01-10-085 from referring in ongoing or future proceedings to any materials that are part of the record in that docket, including materials placed in the record by the Parties. However, the Parties state that they disagree with the rationale advanced by Indicated Respondents and Trial Staff in objecting to that provision. The Parties argue that section 2.2.5 was not at issue before the Presiding ALJ in Docket

⁴² *Id.* at 8-9 (citing 18 C.F.R. § 385.216(a) (2013)).

⁴³ *Id.* at 10-12. Indicated Respondents also distinguish section 2.2.5 from other settlements restricting the use of non-record evidence. *Id.* at 12-13.

⁴⁴ Trial Staff also references the pleadings before the Presiding ALJ and the Presiding ALJ's ruling, as also reflected in Indicated Respondents' comments, which are discussed above.

⁴⁵ Trial Staff Comments at 6 (citing *Puget Sound Energy, Inc., et al.*, 143 FERC ¶ 61,013, at P 36 (2013); *Enron Power Marketing, Inc. and Enron Energy Services Inc.*, 122 FERC ¶ 61,015, at P 65 (2008); *Transwestern Pipeline Co.*, Opinion No. 238, 32 FERC ¶ 61,009, at 61,037 (1985), *reh'g denied*, Opinion No. 238-A, 36 FERC ¶ 61,175 (1986); *Southern California Edison Co.*, 137 FERC ¶ 61,016, at P 11 (2011)).

⁴⁶ *Id.* at 6-7.

No. EL01-10-085 and, contrary to Indicated Respondents' contentions, that they did not mislead the Presiding ALJ about the provision as part of their post-trial pleadings relating to entry into the Settlement. The Parties state that while those pleadings mentioned section 2.2.5, they were not asking the Presiding ALJ to make any ruling on that section. The Parties note that the Presiding ALJ's order expressly states that no settlement or settlement provision was before her for disposition and that the issue of whether Indicated Respondents would be permitted to rely for their own purposes of evidence submitted by the Parties was not presented to her.

26. Finally, Indicated Respondents filed supplemental comments that follow-up on the Parties' Joint Reply Comments. Indicated Respondents state that they contacted the Parties to confirm that the Commission would not be barred under section 2.2.5 of the Settlement from relying on the closed record in Docket No. EL01-10, and that the Parties confirmed this understanding. Therefore, Indicated Respondents explain, their understanding from the Parties is that section 2.2.5 does not constrain their or Trial Staff's ability to make any argument using evidence or arguments sponsored into the record by one or more of the Parties and that it does not constrain the Commission from relying upon any record evidence or arguments in resolving the contentions of the Indicated Respondents or Trial Staff. Indicated Respondents state that, provided that this is the interpretation placed on section 2.2.5, they do not oppose the Settlement.

Commission Determination

27. Consistent with the Commission's precedent,⁴⁷ the Commission determines that CalPX and CAISO will be held harmless for actions taken to implement this Settlement. Accordingly, this order incorporates the "hold harmless" language set out above, with one modification. Specifically, as incorporated by this order, the language shall be read to apply to both CAISO and CalPX.

28. Given the assurances provided by the Parties in their Joint Reply Comments and the further communications between the Parties and Indicated Respondents as noted in Indicated Respondents' supplemental comments, as discussed above, regarding the interpretation of section 2.2.5 of the Settlement, we conclude that the Settlement is

⁴⁷ See, e.g., *San Diego Gas & Elec. Co. v. Sellers of Energy and Ancillary Servs.*, 145 FERC ¶ 61,015, at P 25 (2013) (incorporating "hold harmless" language from earlier settlements); *San Diego Gas & Elec. Co. v. Sellers of Energy and Ancillary Servs.*, 133 FERC ¶ 61,249, at P 17 (2010) (same); *San Diego Gas & Elec. Co. v. Sellers of Energy and Ancillary Servs.*, 128 FERC ¶ 61,242, at P 19 (2009) (same); *San Diego Gas & Elec. Co. v. Sellers of Energy and Ancillary Servs.*, 128 FERC ¶ 61,002, at P 17 (2009) (same); *San Diego Gas & Elec. Co. v. Sellers of Energy and Ancillary Servs.*, 128 FERC ¶ 61,004, at P 21 (2009) (same); *San Diego Gas & Elec. Co. v. Sellers of Energy and Ancillary Servs.*, 126 FERC ¶ 61,007, at P 38 (2009) (same).

uncontested. Also given these assurances, we find it unnecessary to require the Parties to modify section 2.2.5, as suggested by Trial Staff in its comments. We note, however, that our decision to approve this Settlement as uncontested is based upon clarification provided by the Parties that section 2.2.5 does not limit the rights of non-settling parties or Trial Staff to make arguments that use evidence or arguments placed in the closed record in Docket No. EL01-10 by any of the Parties, and that the Commission may also rely on that record, including evidence or arguments placed therein by the Parties, in resolving arguments raised in that proceeding.

29. We find that the Settlement is fair and reasonable and in the public interest, and it is hereby approved. The Commission's approval of the Settlement does not constitute approval of, or precedent regarding, any principle or issue in this proceeding.

The Commission orders:

The Settlement is hereby approved, as discussed in the body of this order.

By the Commission.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.